

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 PA-01 SP-02 SS-15 NSCE-00 SSO-00
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O R 051248Z APR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 7348
INFO USMISSION USBERLIN IMMEDIATE
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 02 BONN 06104

E.O. 11652: GDS
TAGS: PGOV, BQG, AKB
SUBJECT: LORENZ-DRENCKMANN TRIAL IN BERLIN

REFS: (A) USBER 759
(B) BONN 5803
(C) BONN 5694

SUMMARY: AT THE APRIL 4 BONN GROUP MEETING THE FRG REP
INDICATED THAT THE FRG IS SENSITIVE TO THE NEED TO
PREVENT A POLITICIZATION OF THE LORENZ-DRENCKMANN TRIAL.
HE SAID THAT THE DANGER OF SUCH POLITICIZATION IS
MINIMIZED BY THE FACT THAT THE COURT WILL EXCLUDE
IRRELEVANT EVIDENCE AND CANNOT, IF THE FRG CABINET SO
DECIDES, COMPEL THE CHANCELLOR OR FRG MINISTERS TO
TESTIFY. A MINISTRY OF JUSTICE (MOJ) OFFICIAL WAS
TO GO TO BERLIN APRIL 4 TO DISCUSS ALLIED "CONCERNS"
WITH OBERLE.

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THE US REP CLARIFIED THAT THERE HAD BEEN NO ALLIED
SUGGESTION IN THE BONN GROUP THAT THE CHARGE BE DROPPED,
ONLY QUESTIONS RAISED AS TO FRG'S REACTION TO THE
POSSIBILITY THAT THE DEFENSE MIGHT SEEK TO CALL HIGH
FRG OFFICIALS AS WITNESSES OR OTHERWISE POLITICIZE THE
TRIAL. THE FRENCH AND UK REPS DID NOT DISAGREE WITH
THIS CHARACTERIZATION.

WITH RESPECT TO REF A (WHICH WAS RECEIVED AFTER THE MEETING) WE AGREE WITH USBER THAT THE ALLIES SHOULD STAY OUT OF THE QUESTION WHETHER THE CHARGE OF COERCING CONSTITUTIONAL ORGANS SHOULD BE DROPPED. WE DO NOT BELIEVE WE SHOULD SEEK UK AND FRENCH AGREEMENT TO TELL THIS TO THE FRG OR OBERLE SINCE IT WOULD PUT US IN THE POSITION OF DEMANDEUR AND, IF AGREEMENT COULD BE REACHED, MIGHT BE AT THE PRICE OF GIVING OBERLE THE "SIGNAL" WE WANT TO AVOID. AS THINGS NOW STAND, THE FRENCH AND BRITISH MUST CONVINCE US BEFORE AN ALLIED "SIGNAL" CAN BE GIVEN. ACTION REQUESTED: SEE PARA 8 END SUMMARY

1. REFERRING TO THE DISCUSSION AT THE BONN GROUP MEETING OF MARCH 30, THE FRG BONN GROUP REP (WEGENER) RAISED THE SUBJECT AT THE APRIL 4 BONN GROUP MEETING. HE SAID THAT IN REPLY TO THE DOUBTS EXPRESSED BY THE UK LAST WEEK REGARDING THE CHARGE OF COERCING CONSTITUTIONAL ORGANS (CHARGE 105), THE FOREIGN OFFICE HAD TAKEN UP THE QUESTION WITH THE MOJ. THE MOJ HAS, ON ITS OWN, CONSIDERED WHETHER THE CHARGE MIGHT BE DROPPED IN ORDER TO AVOID A POLITICIZATION OF THE TRIAL.

2. HOWEVER, THERE ARE TWO FACTS WHICH TEND TO DIMINISH THE LIKELIHOOD THAT THE CHARGE WILL RESULT IN A POLITICIZATION OF THE TRIAL. FIRST, THE COURT WILL ONLY ALLOW CONFIDENTIAL

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RELEVANT EVIDENCE TO BE INTRODUCED. SECOND, SECTION 50, PARAGRAPH 2 OF THE CODE OF CRIMINAL PROCEDURE (STRAF-PROZESSORDNUNG) PROVIDES THAT THE CHANCELLOR AND THE FRG MINISTERS CANNOT BE COMPELLED TO TESTIFY IN COURT IF THE CABINET DECIDES THEY SHOULD NOT. THE COURT CAN, HOWEVER, TAKE THEIR TESTIMONY ELSEWHERE (E.G. BONN). THIS WOULD PREVENT THE CHANCELLOR OR MINISTERS FROM BEING OBLIGED TO GO TO BERLIN.

3. WEGENER SAID THAT THE MOJ CONCLUSION IS THAT THE DANGER OF POLITICIZATION IS NOT AS GREAT AS IT OTHERWISE MIGHT HAVE BEEN. HE ALSO SAID THAT AN OFFICIAL OF THE MOJ WAS FLYING TO BERLIN APRIL 4 TO DISCUSS WITH OBERLE THE ALLIED CONCERNS.

4. THE US REP SAID HE WISHED TO CLARIFY THAT THERE HAD BEEN NO ALLIED SUGGESTION THAT THE CHARGE BE DROPPED, CERTAINLY NOT FROM THE US SIDE. TO DO SO WOULD BE AN INTERFERENCE IN A JUDICIAL PROCEEDING. THE ONLY WAY THIS MATTER HAD BEEN ADDRESSED WAS IN THE FORM OF A QUESTION AS TO WHETHER THE FRG WAS AWARE OF THE POSSIBLE ATTEMPT TO CALL FRG OFFICIALS AS WITNESSES AND WHETHER THE FRG HAD

CONSIDERED WHAT IT MIGHT DO TO PREVENT SUCH A POLITICI-

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ZATION OF THE TRIAL. THIS WAS NO MORE THAN AN ATTEMPT
TO POINT OUT A POSSIBLE PROBLEM. (COMMENT: OUR
STATEMENT, WHILE LITERALLY TRUE, INTENTIONALLY OVER-
LOOKED THE NUANCE IN EYERS' COMMENTS (PARA 4 OF REF B)
IN AN ATTEMPT TO CORRECT ANY IMPRESSION THAT THERE
WERE "ALLIED" CONCERNS.) HE ADDED THAT THE ALLIES
HAVE BEEN AWARE OF THE CHARGE SINCE 1975 AND THAT IT
WAS THE REASON THE FEDERAL PROSECUTOR HAD TO PROSECUTE
THE CASE.

5. THE FRENCH REP (RICHARD), THE UK REP (HARPER) AND
THE UK LEGAL ADVISER (EATON) DID NOT DISAGREE WITH THE
CHARACTERIZATION OF WHAT HAD BEEN SAID AT THE MARCH
30 BONN GROUP MEETING. UK REP EYERS IS NOT IN BONN AT
THE MOMENT. WEGENER CONFIRMED THAT THIS IS WHAT HE HAD
UNDERSTOOD AT THE LAST MEETING. THE ALLIED REPS THANKED
WEGENER FOR THE INFORMATION.

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6. COMMENT: THE FACT THAT THE FRENCH OR BRITISH REPS DID NOT DISAGREE WITH OUR DESCRIPTION OF WHAT WAS SAID AT THE LAST MEETING DOES NOT, OF COURSE, NECESSARILY MEAN THEY WOULD AGREE THAT WE SHOULD REFRAIN FROM SEEKING IN SOME WAY TO HAVE THE CHARGE DROPPED. THE IMPORTANT THING IS THAT THE FRG BONN GROUP REP IS AWARE THAT ANY SUCH PROPOSAL TO HAVE THE CHARGE DROPPED DOES NOT HAVE US SUPPORT. THE BRITISH AND FRENCH, SHOULD THEY WANT TO HAVE A "SIGNAL" GIVEN TO OBERLE, WILL HAVE TO CONVINCE NOT ONLY THE FRG BUT ALSO THE US.

7. WE HAVE THE FOLLOWING COMMENTS ON REF A, WHICH WAS RECEIVED AFTER THE BONN GROUP MEETING.

A) AS IS EVIDENT FROM THE ABOVE AND REFS B AND C, WE AGREE WITH USBER'S VIEW THAT THE ALLIES SHOULD STAY OUT OF THE QUESTION WHETHER OR NOT CHARGE 105 SHOULD BE DROPPED.

B) WITH RESPECT TO THE SUGGESTION THAT WE DETERMINE WHETHER THE PROVISION IN QUESTION HAS BEEN RELIED UPON IN CASES IN THE FRG (THE SECOND PARAGRAPH 2 OF REF A), WE WOULD PREFER NOT TO ASK THE FRG SINCE THIS MAY GIVE THE FRG A FALSE SIGNAL--I.E. THAT WE BELIEVE THE CHARGE SHOULD BE DROPPED. TO RESEARCH THE QUESTION ON OUR OWN DOES NOT MERIT THE CONSIDERABLE EFFORT INVOLVED.

C) WITH RESPECT TO PARAGRAPH 12, WE BELIEVE THAT THE BEST TACTIC IS NOT TO TAKE THE INITIATIVE TO SETTLE THE MATTER TRIPARTITELY WITH THE BRITISH AND FRENCH. IF THEY WISH AN ALLIED APPROACH TO THE FRG (OR OBERLE), THEY WILL NEED OUR AGREEMENT TO DO SO AND THIS WE CAN

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RESIST. FOR US TO SEEK UK AND FRENCH CONCURRENCE IN THE PROPOSED APPROACH TO OBERLE AS DESCRIBED IN REF A, PARAGRAPHS 12 AND 13, WOULD MAKE US THE DEMANDEUR. EVEN IF WE ACHIEVED SUCH CONCURRENCE, IT WOULD PROBABLY BE AT THE PRICE OF COMPROMISE IN A FORM WHICH COULD GIVE OBERLE THE KIND OF SIGNAL WE WOULD PREFER NOT BE GIVEN. IN THAT CONNECTION, WE SHARE USBER'S CONCERNS ABOUT THE IMPLICATION THE KIND OF STATEMENT ENVISAGED IN PARAGRAPH 14 OF REF A COULD GIVE.

8. ACTION REQUESTED: WE THUS PROPOSE, UNLESS

INSTRUCTED TO THE CONTRARY, TO REFUSE TO CONCUR IN ANY
REQUEST THE FRENCH OR BRITISH MIGHT MAKE HERE FOR US
TO JOIN IN GIVING OBERLE A "SIGNAL" AND RECOMMEND
THAT USBER CONTINUE TO FOLLOW THE SAME APPROACH.
STOESSEL

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